

ATTACHMENT F

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Illinois Bell Telephone Company)	
Indiana Bell telephone Company,)	
Michigan Bell Telephone Company,)	
The Ohio Bell Telephone Company)	
Wisconsin Bell, Inc.,)	
)	
Complainants,)	File No. E-98-35
)	
v.)	
)	
AT&T Corp.,)	
)	
Defendant.)	

PROPOSED FINDINGS OF FACT
AND CONCLUSIONS OF LAW

The Commission, having reviewed the evidence and arguments herein, finds as follows:

1. Since the AT&T divestiture in 1984, AT&T has purchased dedicated access services from Ameritech and the other LECs in order to provide its end-to-end service to AT&T's interexchange customers. The LECs' access tariffs since their inception have required access purchasers to make space and power available free of charge for the LECs' terminating equipment at the terminal ends of the service. Consequently, AT&T allowed Ameritech to install its terminating equipment in the designated LEC Equipment Space at AT&T's POP free of charge.

2. Under these so-called "total service" access arrangements, AT&T purchases from an access vendor the

access circuit that terminates in the AT&T POP. AT&T provides that circuit, along with other network functionality, to the end user customer, with full responsibility for the end user's entire interexchange retail service end-to-end. With total service, there is no relationship between the access provider and AT&T's end user customer. AT&T is the customer of record for the access circuit terminating in the AT&T POP, and the space in the POP which houses the terminating equipment for that circuit is space being used by AT&T for its own service requirements.

3. In addition to total service, two other access arrangements have been established under which the end user customer purchases access service from a LEC or CAP. These arrangements are known as baseline service and coordinated access service, respectively.

4. Under a baseline service arrangement, the end user elects to purchase special access service directly from an access vendor, and the access provider transports the end user's interexchange traffic from the customer premises to an AT&T POP. The end user separately purchases interoffice channel ("IOC") private line service from AT&T. The customer assumes the responsibility of provisioning and connecting the two services. Thus, the customer receives a bill from the access vendor for the special access circuit and is the customer of record for that circuit. The

customer receives a separate bill from AT&T for IOC service.

5. Under baseline service, the only relationship between AT&T and the access vendor (such as Ameritech) is AT&T's provisioning of space, power, security and environmental conditioning to house equipment the access vendor uses to terminate the customer's dedicated access facilities at the POP. AT&T does not guarantee service quality or performance in a baseline service arrangement. Instead, any warranty for the access service is provided to the customer by the access vendor

6. Another option available to an access customer is a Coordinated Access Service arrangement. This arrangement is identical to baseline service, except that AT&T, as the customer's agent and for a fee, coordinates with the customer's selected access vendor the provisioning of the dedicated access facilities from the customer premises to the AT&T POP. As with baseline service, the access provider bills the end user directly for its special access service, AT&T bills the end user directly for the IOC service, and AT&T does not warrant or guarantee the service.

7. Total service is functionally and operationally distinct from baseline or coordinated access arrangements in several respects. Unlike both baseline and coordinated access services, in total service AT&T is wholly responsible for installation, maintenance,

provisioning, billing, account maintenance and performance monitoring and standards for the end user service. AT&T is held accountable by the end user customer for all aspects of the service and provides its specified warranty to the customer as an assurance of quality. AT&T relies upon these important differences when marketing its total service to end users.

8. All three of these arrangements require the placement of equipment for terminating the access circuits at or near the AT&T POP. In an AT&T solely-owned (or leased) POP, the access vendors place terminating equipment in the AT&T POP. In a condominium building, which is a building that houses both an AT&T POP and a LEC central office, the LEC has the advantage of not having to place terminating equipment in the AT&T POP, but can house the terminating equipment in its own central office and simply run a cable connection from the terminating equipment in the central office to AT&T's interexchange network facilities in the AT&T POP. This cable arrangement has been reasonable, given the fact that AT&T and the LEC are both housed in the condominium building and in view of the limited space in condominium buildings.

9. At the Bell System divestiture in the mid-1980's, Ameritech provided the overwhelming majority of special access circuits in its service territory. As noted above, Ameritech's access tariffs require that the access customer (which its access tariffs define as either an end

user or an interexchange carrier) must furnish space and power to Ameritech at no charge at the points of termination for dedicated access. For baseline and coordinated access services, the end user is the customer and, pursuant to the tariffs, is required to furnish space and power for the terminating equipment at both terminal ends of the access service.

10. Thus, in a total service arrangement, AT&T as the customer of record for the special access component furnishes space and power at its POP to Ameritech without charge to house the equipment for terminating the facilities ordered by AT&T to provide service to its retail customers. Because AT&T is obligated by the LEC access tariffs to provide free space and power for total service arrangements, AT&T's policy and practice since divestiture has been to provide free space, power, security and environmental conditioning to all access vendors for their terminating equipment under a total service arrangement.

11. In the case of baseline or coordinated access arrangements, however, the special access circuit terminating in AT&T's POP is provided by Ameritech to the end user customer. Pursuant to Ameritech's own tariff, the end user customer is obligated to make arrangements to obtain the space and power in AT&T's POPs necessary to house the equipment used to provide service by Ameritech to that customer. While that obligation resides with the customer, in practice Ameritech, on the customer's behalf,

has arranged for that space and power when providing baseline and coordinated access services.

12. For baseline and coordinated access service arrangements, AT&T's Shared Customer-Provided Access ("SCPA") policy since divestiture was to require that terminating equipment be housed in separate space, for which the access vendor was required to compensate AT&T for space, power, security and environmental conditioning. While AT&T's SCPA policy for providing space and power for the terminating equipment for access providers has not changed since divestiture, AT&T's enforcement of the policy has evolved.

13. Specifically, because the majority of special access arrangements in the mid-1980's were total service arrangements (in which AT&T purchased the dedicated access facilities primarily from LECs), and because the number of baseline and coordinated access services being provided by LECs was relatively small, AT&T as an accommodation initially permitted LECs to terminate all baseline and coordinated access circuits on the same equipment and in the same space ("LEC Equipment Space" or "Common Access Area") the LECs used to terminate total service arrangements.

14. Meanwhile, AT&T enforced its SCPA policy vis-à-vis competitive access providers ("CAPs") and alternate access vendors ("AAVs"), requiring them to terminate baseline and coordinated access circuits on a

separate set of terminating equipment in SCPA space, and to pay for the space, power, security, and environmental conditioning charges associated with that space.

15. In late 1994, however, AT&T received the 1995 space demand forecasts from LECs and CAPs for space in AT&T's POPs. These forecasts noted a significant increase in LEC requests to use the Common Access Area to house circuits being sold to baseline and coordinated access customers. In fact, the increase in demand for space to terminate baseline and coordinated access circuits far exceeded the demand for space and power to terminate circuits for AT&T's total service access requirements. AT&T did not at that time, and does not as yet today, have billing, ordering, and inventory systems in place to enable it to provide bills on a per circuit basis for the space and power used to terminate baseline and coordinated access circuits only.

16. Therefore, AT&T was faced with the prospect of providing significantly more free space and power to LECs for terminating Baseline and Coordinated circuits, for which AT&T was not the customer of record and was receiving no offsetting compensation. The net effect of these demand forecasts potentially meant that AT&T was confronted with incurring more significant costs with no compensation, a more complex and expensive inventory management process, and a greater disparity in treatment between LECs, including Ameritech, as opposed to CAPs and AAVs.

17. One option in the circumstances was for AT&T to develop a way to identify the baseline and coordinated access circuits by vendor in order to bill for them. Another was to begin strictly and uniformly enforcing its SCPA policy. The former would have required AT&T to completely overhaul or revamp the inventory and order processing systems and billing arrangements for the Common Access Area, an option which in the circumstances was neither required nor a justifiable business expense and endeavor. Consequently, AT&T elected to begin strictly enforcing its policy.

18. Thus, in October 1994, AT&T notified all access vendors -- LECs and CAPs alike -- that it would begin to strictly and uniformly enforce its SCPA policy. By uniformly enforcing the policy, AT&T ensured that all LECs and CAPs would have the space, power, security and environmental controls necessary to house their terminating equipment and that every LEC and CAP would pay for the space and power it uses for baseline and coordinated access service.

19. In an effort to ensure a smooth transition, AT&T informed these vendors that all CAPs could continue to use equipment installed in the Common Access Area prior to July 15, 1994 ("grandfathered equipment") to terminate Baseline and Coordinated circuits, free of charge, and that all LEC equipment installed in the Common Access Area prior to March 1995 would likewise be grandfathered for

terminating Baseline and Coordinated circuits, again free of charge. Ameritech has been able to use grandfathered equipment since then to serve virtually all of its baseline and coordinated customers

20. The record is devoid of any evidence to support Ameritech's argument that AT&T's SCPA policy was discriminatory or gave AT&T an advantage over other access providers. Significantly, AT&T's tariffed rates for DSO, DS1 and DS3 circuits are higher than the corresponding Ameritech tariffed rates. If the SCPA charges had truly disadvantaged Ameritech, its rates would presumably be higher than those of AT&T. Nor does Ameritech claim, much less present any evidence, that that the technical arrangements provided by AT&T underlying baseline, coordinated and total service arrangements were not the same.

21. Ameritech's ability to compete in the dedicated access market has been impacted (if at all) only by Ameritech's failure or unwillingness to properly implement and adhere to the SCPA policy. Ameritech itself recognizes the grave importance of planning the construction of facilities to meet both the current and future needs of its customers, and the need to maintain available capacity on its facilities so that it can respond to service requests without planning and constructing new facilities. This standard network capacity planning process is likewise required by AT&T's SCPA policy.

22. The record reflects that it was Ameritech's failure to adequately consider and effectively plan to meet its customers' needs which accounts for any delay in the provisioning of baseline and coordinated access service terminating on equipment in SCPA space. AT&T displayed exemplary cooperation with Ameritech's frequently burdensome requests by, for example, accommodating Ameritech by processing multiple SCPA requests per POP. AT&T also did not limit the amount of capacity requested per SCPA questionnaire, or impose a limit on the number of requests within a given period of time.

22. For some time, AT&T has recognized that billing for space and power on a per circuit basis, with standard recurring and non-recurring charges, could offer advantages over the SCPA's space license procedure, including more efficient use of the available floor space in AT&T's POPs. However, AT&T did not have (and currently still does not have) the proper systems to permit such per circuit billing.

23. Over the last few months, AT&T has assessed the feasibility of converting to a per circuit billing arrangement, which would allow access vendors to use the same equipment to terminate total, baseline, and coordinated access service and has recently decided to undertake the additional development required to implement a per circuit billing method. Although AT&T states it believes that its SCPA policy was just, reasonable and

fully lawful, and still asserts that the Commission lacks subject matter jurisdiction over its provision of space and power for baseline and coordinated services, AT&T has now determined to modify that policy by eliminating the restrictions that Ameritech's instant Complaint addresses. In other words, AT&T is voluntarily modifying its SCPA policy for all special access circuits, interstate as well as intrastate.

24. Under its modified policy, AT&T will allow access providers (including, but not limited to, LECs such as Ameritech) to terminate total, baseline, and coordinated access service circuits on shared equipment in AT&T's POPS (whether or not those circuits are classified as interstate or intrastate). This proposal will eliminate the "split equipment" feature of AT&T's SCPA policy. Moreover, AT&T agrees that Ameritech and other LECs, at their option, may use collocation or cable connections in condominium buildings to link AT&T and LEC facilities.

25. AT&T will also grant access vendors, the option to terminate any existing SCPA agreements without penalty or maintain such agreements until their terms expire.¹ Because a mechanized process is not yet in place

¹ For SCPA agreements that are terminated in the process of installation, AT&T will determine the extent of completion of the particular installation. The unused portion of the contract non-recurring charges will be refunded in the form of credits to future purchases that can be used to pay monthly recurring or future

for assessing charges to vendors such as Ameritech on a transaction (i.e., per circuit) basis, AT&T will establish an interim billing procedure until a mechanized process is developed. Under this procedure, AT&T will waive non-recurring charges for Baseline and Coordinated circuits terminated on equipment installed prior to March 1995. Once the mechanized billing system is completed, the billing for baseline and coordinated circuits will be converted to transaction-based non-recurring and monthly per port charges. AT&T proposes to assess such charges upon Ameritech and other access vendors (including LECs and CAPs) under standard contracts.

CONCLUSIONS OF LAW

1. The Commission lacks jurisdiction to entertain this action under Titles I and II of the Communications Act because the provision of space and power by AT&T to LECs and CAPs to enable them to provide access service to their customers out of AT&T's POPs is not a common carrier communications service, nor is it incidental to a service provided by AT&T. It is well-established that

(footnote continued from previous page)

non-recurring charges. For SCPA arrangements that have already been completed, AT&T will not refund the non-recurring charges, since AT&T has already incurred these costs. However, the equipment installed under a SCPA arrangement can be used for the provisioning of any type of access service, provided Ameritech (or any other access vendor that has entered into such an arrangement) elects to terminate the SCPA contract.

common carrier communications service must permit customers to "transmit intelligence of their own design and choosing." See National Assoc. of Regulatory Utility Commissioners, 533 F.2d 601, 608-09 (D.C. Cir. 1976). Space and electrical power, which are amenities AT&T offers in a building for carriers providing a service to non-AT&T customers, do not offer such a capability by themselves. Rather, AT&T's provision of these amenities is a real estate transaction.

2. Ameritech's reliance on the Commission's Expanded Interconnection Order is misplaced. The Commission found there (7 FCC Rcd at 7444-46) that the incumbent LECs' central office space was "incidental" to the physical collocation service provided by the LECs, and that space and power could not be offered separately from physical collocation, and that the provision of space and associated power was thus a common carrier communications service. See Expanded Interconnection Order, 7 FCC Rcd at 7444-46. AT&T's provision of space and power as a stand-alone offering to providers offering access service out of its POPs is not incidental to the IOC service that AT&T provides to baseline and access coordinated customers, and thus is not a common carrier communications service subject to Title II of the Communications Act.

3. Even if we were to conclude that AT&T's provision of space and power to access providers was a common carrier communications service (and we reject such a

finding) AT&T is not required to tariff these functions, as Ameritech contends. Section 211 of the Communications Act (47 U.S.C. § 211) expressly authorizes a carrier, such as AT&T, to provide common carrier communications service to other carriers, such as Ameritech, pursuant to an intercarrier contract. Additionally, pursuant to our Detariffing Order (at ¶ 77), the Commission has forborne from applying Section 203 tariff filing requirements to non-dominant interexchange carriers, such as AT&T, for interstate, domestic interexchange services. Therefore, to the extent that the Commission might find the provision of space and power to be a common carrier communications service provided by AT&T, it in all events would not be required to be tariffed.

4. Ameritech's claims that AT&T SCPA policy violated Sections 201 or 202 of the Act must also be denied. AT&T's policy did not unreasonably require Ameritech to deploy an inefficient network or resulted in stranded terminating facilities, as Ameritech contends. Under the policy, access providers have been required to install new, separate equipment to terminate baseline or coordinated access service only after existing, grandfathered capacity on their equipment was exhausted. This enabled Ameritech to use the existing equipment to serve both AT&T and non-AT&T customers, and install separate new equipment to serve non-AT&T customers when its

customer demand exceeded the remaining capacity on the existing equipment.

5. Ameritech additional argument that customers ordering special access service from Ameritech would have to incur the space and power charge AT&T assesses to Ameritech while customers purchasing AT&T's end-to-end service would not, thereby resulting in unreasonable discrimination, is likewise invalid. As a matter of law, AT&T is incapable of discriminating unreasonably against entities that are not its own customers. Moreover, because we have previously found that AT&T lacks market power in all domestic interexchange services, including private line and resold special access, the space and power policy could not have conferred an undue advantage on AT&T's end-to-end customers over the LEC's special access customers. Indeed, AT&T's SCPA policy eliminated any difference in the treatment of LECs and CAPs terminating access service out of AT&T's POPs, and ensured that customers would not be discouraged from using particular access providers based on the existence of the space and power charge.

6. There is likewise no merit to Ameritech's claims that the Commission's Interconnection Order, implementing Section 251 of the Act, requires AT&T to facilitate Ameritech's deployment of an efficient network. That order (at ¶¶ 628-29) prescribed the requirements with which an incumbent LEC must comply under Section 251 when it offers collocation, interconnection and unbundled

network elements. AT&T is correct that Section 251 is inapplicable to the services it provides to Ameritech for the latter's use with baseline and coordinated access customers.

7. Finally, in all events we are compelled to dismiss this complaint as moot because it fails to present any concrete case or controversy for adjudication. AT&T's modifications to its SCPA policy described in our findings above have addressed all of the substantive issues Ameritech has raised in its Complaint, and thus effectively eliminate any need for the Commission to decide this case.

CERTIFICATE OF SERVICE

I, Ann Marie Abrahamson, do hereby certify that on this 22nd day of April, 1998, a copy of the foregoing "Verified Answer and Affirmative Defenses" of AT&T Corp. was sent by prepaid overnight mail, to the party listed below.

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/s/ Ann Marie Abrahamson
Ann Marie Abrahamson

APPENDIX B

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Illinois Bell Telephone Company,)	
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Incorporated,)	
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Complainants,)	File No. E-98-35
)	
v.)	
)	
AT&T,)	
)	
Defendant)	

**AMERITECH'S OBJECTIONS
TO AT&T's FIRST SET OF INTERROGATORIES**

Pursuant to Section 1.729(c) of the Commission's rules, Illinois Bell Illinois Bell Telephone Company, Indiana Bell Telephone Company Incorporated, Michigan Bell Telephone Company, The Ohio Bell Telephone Company, and Wisconsin Bell, Inc. (collectively "Ameritech") hereby oppose AT&T's first set of interrogatories.

Given the fact that AT&T has agreed to modify its SCPA policy to eliminate the bifurcation and condominium coaxial cable requirement aspects of that policy, it would appear that the only issues that remain between the parties are: (1) whether the charges should be tariffed; (2) what those charges should be; and (3) damages. Of the interrogatories submitted by AT&T, none are relevant to either of the first two issues noted above. Certain of the

interrogatories may be relevant to the issue of damages; however, Ameritech has requested that damages be determined in a subsequent phase of this proceeding once the other issues raised in the Complaint have been resolved.

WHEREFORE, Ameritech respectfully request that AT&T's proposed interrogatories be disallowed at this time.

Respectfully submitted,

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